

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON

GARY L. MCCOY,

Plaintiff,

Case No. 3:17-cv-432

vs.

DR. RODNEY L. CARLSON, *et al.*,

Defendants.

District Judge Thomas M. Rose  
Magistrate Judge Michael J. Newman

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**ORDER AND ENTRY GRANTING PLAINTIFF GARY MCCOY'S MOTION FOR  
LEAVE TO FILE A THIRD AMENDED COMPLAINT (DOC. 74)**

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**REPORT AND RECOMMENDATION<sup>1</sup> THAT DEFENDANTS' MOTIONS TO DISMISS  
THE SECOND AMENDED COMPLAINT (DOCS. 61, 65, 67) BE DENIED AS MOOT**

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This civil case is before the Court on Plaintiff's motion for leave to file a third amended complaint. Doc. 74. Defendants did not file a memorandum in opposition to Plaintiff's motion for leave, and the time for doing so has expired. Accordingly, for good cause shown and absent opposition -- and noting that, pursuant to Fed. R. Civ. P. 15(a)(2), "[t]he [C]ourt should freely give leave when justice so requires" -- Plaintiff's motion for leave to file a third amended complaint (doc. 74) is **GRANTED**. Plaintiff is **ORDERED** to separately file the third amended complaint within 7 days from the entry of this Order.

Also before the Court are three motions to dismiss filed by Defendants. Docs. 61, 65, 67. Because Defendants' motions to dismiss are directed to Plaintiff's second amended complaint, the undersigned **RECOMMENDS** that they be **DENIED AS MOOT AND WITHOUT**

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<sup>1</sup> Attached hereto is a NOTICE to the parties regarding objections to this Report and Recommendation.

**PREJUDICE TO REFILE.** *See Laning v. Doyle*, No. 3:14-cv-24, 2014 WL 2805240, at \*1–2  
(S.D. Ohio June 20, 2014).

Date: April 30, 2019

s/ Michael J. Newman  
Michael J. Newman  
United States Magistrate Judge

### **NOTICE REGARDING OBJECTIONS**

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within **FOURTEEN** days after being served with this Report and Recommendation. This period is not extended by virtue of Fed. R. Civ. P. 6(d) if served on you by electronic means, such as via the Court's CM/ECF filing system. If, however, this Report and Recommendation was served upon you by mail, this deadline is extended to **SEVENTEEN DAYS** by application of Fed. R. Civ. P. 6(d). Parties may seek an extension of the deadline to file objections by filing a motion for extension, which the Court may grant upon a showing of good cause.

Any objections filed shall specify the portions of the Report and Recommendation objected to, and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendation is based, in whole or in part, upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs.

A party may respond to another party's objections within **FOURTEEN** days after being served with a copy thereof. As noted above, this period is not extended by virtue of Fed. R. Civ. P. 6(d) if served on you by electronic means, such as via the Court's CM/ECF filing system. If, however, this Report and Recommendation was served upon you by mail, this deadline is extended to **SEVENTEEN DAYS** by application of Fed. R. Civ. P. 6(d).

Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn*, 474 U.S. 140, 153-55 (1985); *United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981).